116TH CONGRESS
2d Session

HOUSE OF REPRESENTATIVES

REPORT
116–622

RELIABLE INVESTMENT IN VITAL ENERGY REAUTHORIZATION ACT

DECEMBER 8, 2020.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. PALLONE, from the Committee on Energy and Commerce, submitted the following

R E P O R T

[To accompany H.R. 3361]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 3361) to amend the Energy Policy Act of 2005 to reauthorize hydroelectric production incentives and hydroelectric efficiency improvement incentives, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

CONTENTS

19–006

I. Purpose and Summary

H.R. 3361, the "Reliable Investment in Vital Energy Reauthorization Act" or the "RIVER Act", was introduced by Representatives David McKinley (R–WV) and Paul Tonko (D–NY). This bill reauthorizes the Hydroelectric Production Incentive and the Hydropower Efficiency Improvement programs at the Department of Energy.

II. Background and Need for the Legislation

Sections 242 and 243 of the Energy Policy Act of 2005, respectively, authorized the Hydroelectric Production Incentives program and the Hydroelectric Efficiency Improvement program.[1] The purpose of the production incentives program is to provide funds to support the development of hydropower production at existing dams and conduits. Congress established the efficiency improvement program to encourage investments to improve the energy efficiency of existing hydropower production facilities.

There are thousands of existing dams and conduits in the United States. These facilities present an opportunity for expanding hydropower production without the costs and environmental effects associated with building new dams. In addition to power production, hydropower provides other ancillary services that stabilize the electricity grid, including black start capability, energy storage capability, and grid stability.[2] And, these grid services are often not sufficiently compensated in electricity markets.[3] The hydropower production program is intended to incentivize investment in powering these structures by providing annual payments over a 10-year period to operators who begin generating power during the period between October 1, 2005, and September 30, 2015. The facilities eligible for the program are those that were constructed before August 8, 2005. Current law caps annual payment to a facility at $750,000. H.R. 3361 reauthorizes the hydropower production program at $10 million for 17 years beginning in fiscal year 2019.

The hydroelectric efficiency improvement program is intended to incentivize capital improvements to existing hydropower facilities. The Secretary of Energy may provide incentive payments for capital investments that improve the efficiency of a facility by at least three percent. The law caps the award to any single facility at $750,000 and cannot exceed 10 percent of the capital cost of the improvement. H.R. 3361 reauthorizes the hydropower efficiency improvement program at $10 million for 17 years beginning in fiscal year 2019.

III. Committee Hearings

For the purposes of section 103(i) of H. Res. 6 of the 116th Congress, the following hearings were used to develop or consider H.R. 3361:

---

[1] Pub. L. No. 109–58 (2005).

[2] Department of Energy, Office of Energy Efficiency & Renewable Energy, *4 Reasons Why Hydropower is the Guardian of the Grid* (May 1, 2017) (www.energy.gov/eere/articles/4-reasons-why-hydropower-guardian-grid).

[3] House Committee on Energy and Commerce, *Part II: Powering America: Defining Reliability in a Transforming Electricity Industry*, 114th Cong. (Oct. 3, 2017).

On March 15, 2017, the Subcommittee on Energy held a hearing entitled, "Modernizing Energy Infrastructure: Challenges and Opportunities to Expanding Hydropower Generation." The Subcommittee received testimony from the following witnesses:

- Chuck Hookam, P.E., Director of NBD Services, CMS Energy, on behalf of the American Society of Civil Engineers
- Kieran Connolly, Vice President of Generation and Asset Management, Bonneville Power Administration
- Ramya Swaminathan, CEO, Rye Development, on behalf of the National Hydropower Association
- David Steindorf, California Stewardship Director, American Whitewater on behalf of the Hydropower Reform Coalition

On October 3, 2017, the Subcommittee on Energy held a hearing entitled, "Part II: Powering America: Defining Reliability in a Transforming Electricity Industry." The Subcommittee received testimony from the following witnesses:

- Marty Durbin, Executive Vice President and Chief Strategy Officer, American Petroleum Institute
- Paul Bailey, President and CEO, American Coalition for Clean Coal Electricity
- Maria G. Korsnick, President and CEO, Nuclear Energy Institute
- Tom Kiernan, CEO, American Wind Energy Association
- Steve Wright, General Manager, Chelan Public Utility District on behalf of the National Hydropower Association
- Kelly Speakes-Backman, CEO, Energy Storage Association
- John Moore, Director, Sustainable FERC Project, Energy & Transportation Program, Natural Resources Defense Council

IV. Committee Consideration

Representatives McKinley, Tonko, and Loebsack introduced H.R. 3361 on June 19, 2019, and the bill was referred to the Committee on Energy and Commerce. H.R. 3361 was then referred to the Subcommittee on Energy on June 20, 2019. Hearings related to this bill were held during the 115th Congress.

The Subcommittee met in open markup session on January 9, 2020, to consider H.R. 3361 and nine other bills. During consideration of H.R. 3361, no amendments were offered to the bill and the Subcommittee agreed to a motion by Mr. Rush, Chairman of the subcommittee, to forward H.R. 3361 favorably to the full Committee, without amendment, by a voice vote, a quorum being present.

On July 15, 2020, the full Committee met in virtual open markup session, pursuant to notice, to consider the H.R. 3361 and 29 other bills. No amendments were offered during consideration of the bill. Upon conclusion of consideration of H.R. 3361, the full Committee agreed to a motion on final passage offered by Mr. Pallone, Chairman of the committee, to order H.R. 3361 reported favorably to the House, without amendment, by a voice vote, a quorum being present.

V. Committee Votes

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list each record vote on the motion to report legislation and amendments thereto. The Committee advises that there were no record votes taken on H.R. 3361, including the motion for final passage of the bill.

VI. Oversight Findings

Pursuant to clause 3(c)(1) of rule XIII and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the oversight findings and recommendations of the Committee are reflected in the descriptive portion of the report.

VII. New Budget Authority, Entitlement Authority, and Tax Expenditures

Pursuant to 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

VIII. Congressional Budget Office Estimate

U.S. Congress,
Congressional Budget Office,
Washington, DC, October 26, 2020.

Hon. Frank Pallone Jr.,
Chairman, Committee on Energy and Commerce,
House of Representatives, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3361, the RIVER Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Aaron Krupkin.

Sincerely,

Phillip L. Swagel,
Director.

Enclosure.

H.R. 3361, RIVER Act
As ordered reported by the House Committee on Energy and Commerce on July 15, 2020

By Fiscal Year, Millions of Dollars	2021	2021-2025	2021-2030
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	0	0
Spending Subject to Appropriation (Outlays)	2	69	169

Statutory pay-as-you-go procedures apply?	No	**Mandate Effects**	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2031?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No

H.R. 3361 would amend existing law regarding incentive payments made by the Department of Energy (DOE) to nonfederal owners or operators of certain hydroelectric facilities. DOE currently is authorized to provide two types of incentives to eligible projects: payments based on the amount of hydroelectricity generated by the facility and payments that defray some of the cost of measures that improve the efficiency of existing facilities.

H.R. 3361 would authorize the appropriation of $10 million annually through 2036 for payments based on hydropower generation and another $10 million per year over that period for payments based on investments in hydropower efficiency measures. In addition, the bill would modify the deadlines and eligibility criteria for receiving such assistance.

In 2020, DOE allocated $7 million for generation-based payments; no funding was provided for hydroelectricity efficiency payments. Because CBO estimates the budgetary effects under continuing resolutions on an annualized basis, in 2021 CBO assumes that the same amounts will be available under the current continuing resolution (Public Law 116–159). As a result, CBO estimates that the bill would authorize an increase in spending subject to appropriation in 2021 for generation-based payments of $3 million, the difference between the authorized amount and the annualized amount provided under the continuing resolution.

Based on historical spending patterns for similar activities, and assuming appropriation of the authorized amounts, CBO estimates that implementing H.R. 3361 would cost $69 million over the 2021–2025 period and $169 million over the 2021–2030 period. The costs of the legislation (detailed in Table 1) fall within budget function 270 (energy).

TABLE 1.—ESTIMATED INCREASES IN SPENDING SUBJECT TO APPROPRIATION UNDER H.R. 3361

	By fiscal year, millions of dollars—											
	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2021–2025	2021–2030
Hydroelectric Generation Incentives [a]												
Authorization	3	10	10	10	10	10	10	10	10	10	43	93
Estimated Outlays	1	3	9	10	10	10	10	10	10	10	33	83
Hydroelectric Efficiency Incentives												
Authorization	10	10	10	10	10	10	10	10	10	10	50	100
Estimated Outlays	1	5	10	10	10	10	10	10	10	10	36	86
Total Changes												
Authorization	13	20	20	20	20	20	20	20	20	20	93	193
Estimated Outlays	2	8	19	20	20	20	20	20	20	20	69	169

[a] H.R. 3361 would authorize the appropriation of $10 million annually through 2036 for the Department of Energy to provide hydroelectric generation incentives. In 2020, the department allocated $7 million for those purposes. Because CBO estimates the budgetary effects under continuing resolutions on an annualized basis, in 2021 CBO assumes that the same amount will be available under the current continuing resolution (Public Law 116–159). As a result, CBO estimates that the bill would authorize an increase in spending subject to appropriation in 2021 of $3 million, the difference between the authorized amount and the annualized amount provided under the continuing resolution.

On August 19, 2019, CBO transmitted a cost estimate for S. 859, the Reliable Investment in Vital Energy Reauthorization Act, as ordered reported by the Senate Committee on Energy and Natural Resources on July 16, 2019. The two pieces of legislation are similar, and CBO's estimate of their budgetary effects are the same, adjusted for differences in assumptions about the timing of enactment. The cost estimate for H.R. 3361 also reflects the enactment of the continuing resolution for 2021.

The CBO staff contact for this estimate is Aaron Krupkin. The estimate was reviewed by H. Samuel Papenfuss, Deputy Director of Budget Analysis.

IX. Federal Mandates Statement

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

X. Statement of General Performance Goals And Objectives

Pursuant to clause 3(c)(4) of rule XIII, the general performance goal or objective of this legislation is to reauthorize the Hydropower Production Incentives program at the Department of Energy and to support power production by qualified hydropower facilities.

XI. Duplication of Federal Programs

Pursuant to clause 3(c)(5) of rule XIII, no provision of H.R. 3361 is known to be duplicative of another Federal program, including any program that was included in a report to Congress pursuant to section 21 of Public Law 111–139 or the most recent Catalog of Federal Domestic Assistance.

XII. Committee Cost Estimate

Pursuant to clause 3(d)(1) of rule XIII, the Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

XIII. Earmarks, Limited Tax Benefits, and Limited Tariff Benefits

Pursuant to clause 9(e), 9(f), and 9(g) of rule XXI, the Committee finds that H.R. 3361 contains no earmarks, limited tax benefits, or limited tariff benefits.

XIV. Advisory Committee Statement

No advisory committee within the meaning of section 5(b) of the Federal Advisory Committee Act was created by this legislation.

XV. Applicability to Legislative Branch

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

XVI. Section-by-Section Analysis of the Legislation

Section. 1. Short title

Section 1 designates that the short title may be cited as the "Reliable Investment in Vital Energy Reauthorization Act" or "RIVER Act".

Sec. 2. Hydropower production incentives and efficiency improvements

Section 2(a)(1) amends section 242(c) of the Energy Policy Act of 2005 by extending the eligibility for receipt of subsidies for operating a hydropower facility from the program from 10 years after fiscal year 2006 to 22 years after fiscal year 2006, the first full year of the program following its authorization.

Section 2(a)(2) amends section 242(e)(2) to update the existing reference to the Internal Revenue Code to reflect a change in the Code.

Section 2(a)(3) amends section 242(f) of the Energy Policy Act of 2005 to extend the sunset of the program to 32 years after the fiscal year 2006.

Section 2(a)(4) amends section 242(g) to extend the authorization years of the program to fiscal years 2019 through 2036.

Section 2(b) amends section 243 of the Energy Policy Act of 2005 to extend the authorization of the Hydroelectric Efficiency Improvement program to include the period from fiscal year 2019 through 2036.

XVII. Changes in Existing Law Made by the Bill, as Reported

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

ENERGY POLICY ACT OF 2005

* * * * * * *

TITLE II—RENEWABLE ENERGY

* * * * * * *

Subtitle C—Hydroelectric

* * * * * * *

SEC. 242. HYDROELECTRIC PRODUCTION INCENTIVES.

(a) Incentive Payments.—For electric energy generated and sold by a qualified hydroelectric facility during the incentive period, the Secretary shall make, subject to the availability of appropriations, incentive payments to the owner or operator of such facility. The amount of such payment made to any such owner or operator shall be as determined under subsection (e) of this section. Payments under this section may only be made upon receipt by the Secretary of an incentive payment application which establishes that the applicant is eligible to receive such payment and which satisfies such other requirements as the Secretary deems necessary. Such application shall be in such form, and shall be submitted at such time, as the Secretary shall establish.

(b) Definitions.—For purposes of this section:

(1) QUALIFIED HYDROELECTRIC FACILITY.—The term "qualified hydroelectric facility" means a turbine or other generating device owned or solely operated by a non-Federal entity which generates hydroelectric energy for sale and which is added to an existing dam or conduit.

(2) EXISTING DAM OR CONDUIT.—The term "existing dam or conduit" means any dam or conduit the construction of which was completed before the date of the enactment of this section and which does not require any construction or enlargement of impoundment or diversion structures (other than repair or reconstruction) in connection with the installation of a turbine or other generating device.

(3) CONDUIT.—The term "conduit" has the same meaning as when used in section 30(a)(2) of the Federal Power Act (16 U.S.C. 823a(a)(2)).

The terms defined in this subsection shall apply without regard to the hydroelectric kilowatt capacity of the facility concerned, without regard to whether the facility uses a dam owned by a governmental or nongovernmental entity, and without regard to whether the facility begins operation on or after the date of the enactment of this section.

(c) ELIGIBILITY WINDOW.—Payments may be made under this section only for electric energy generated from a qualified hydroelectric facility which begins operation during the period of ⟦10⟧ *22* fiscal years beginning with the first full fiscal year occurring after the date of enactment of this subtitle.

(d) INCENTIVE PERIOD.—A qualified hydroelectric facility may receive payments under this section for a period of 10 fiscal years (referred to in this section as the "incentive period"). Such period shall begin with the fiscal year in which electric energy generated from the facility is first eligible for such payments.

(e) AMOUNT OF PAYMENT.—

(1) IN GENERAL.—Payments made by the Secretary under this section to the owner or operator of a qualified hydroelectric facility shall be based on the number of kilowatt hours of hydroelectric energy generated by the facility during the incentive period. For any such facility, the amount of such payment shall be 1.8 cents per kilowatt hour (adjusted as provided in paragraph (2)), subject to the availability of appropriations under subsection (g), except that no facility may receive more than $750,000 in 1 calendar year.

(2) ADJUSTMENTS.—The amount of the payment made to any person under this section as provided in paragraph (1) shall be adjusted for inflation for each fiscal year beginning after calendar year 2005 in the same manner as provided in the provisions of ⟦section 29(d)(2)(B)⟧ *section 45K(d)(2)(B)* of the Internal Revenue Code of 1986, except that in applying such provisions the calendar year 2005 shall be substituted for calendar year 1979.

(f) SUNSET.—No payment may be made under this section to any qualified hydroelectric facility after the expiration of the period of ⟦20⟧ *32* fiscal years beginning with the first full fiscal year occurring after the date of enactment of this subtitle, and no payment may be made under this section to any such facility after a payment has been made with respect to such facility for a period of 10 fiscal years.

(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary to carry out the purposes of this section $10,000,000 for ⟦each of the fiscal years 2006 through 2015⟧ *each of fiscal years 2019 through 2036*.

SEC. 243. HYDROELECTRIC EFFICIENCY IMPROVEMENT.

(a) INCENTIVE PAYMENTS.—The Secretary shall make incentive payments to the owners or operators of hydroelectric facilities at existing dams to be used to make capital improvements in the facilities that are directly related to improving the efficiency of such facilities by at least 3 percent.

(b) LIMITATIONS.—Incentive payments under this section shall not exceed 10 percent of the costs of the capital improvement concerned and not more than 1 payment may be made with respect to improvements at a single facility. No payment in excess of $750,000 may be made with respect to improvements at a single facility.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section not more than $10,000,000 for ⟦each of the fiscal years 2006 through 2015⟧ *each of fiscal years 2019 through 2036*.

* * * * * * *

○